

payment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402. (Aug. 16, 1954, ch. 736, 68A Stat. 791.)

§ 6404. Abatements

(a) General rule

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

- (1) is excessive in amount, or
- (2) is assessed after the expiration of the period of limitation properly applicable thereto, or
- (3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes

No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

(c) Small tax balances

The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

(d) Assessments attributable to certain mathematical errors by Internal Revenue Service

In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service

(1) In general

In the case of any assessment of interest on—

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For

purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) Interest abated with respect to erroneous refund check

The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless—

- (A) the taxpayer (or a related party) has in any way caused such erroneous refund, or
- (B) such erroneous refund exceeds \$50,000.

(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service

(1) In general

The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) Limitations

Paragraph (1) shall apply only if—

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer

(1) Suspension

(A) In general

In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of—

- (i) the date on which the return is filed; or
- (ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(B) Separate application

This paragraph shall be applied separately with respect to each item or adjustment.

If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that

the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.

(2) Exceptions

Paragraph (1) shall not apply to—

- (A) any penalty imposed by section 6651;
- (B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;
- (C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return;
- (D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;
- (E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(3)(A) is not met and any listed transaction (as defined in 6707A(c)); or
- (F) any criminal penalty.

(3) Suspension period

For purposes of this subsection, the term “suspension period” means the period—

- (A) beginning on the day after the close of the 36-month period under paragraph (1); and
- (B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

(h) Judicial review of request for abatement of interest

(1) In general

The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary’s failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought—

(A) at any time after the earlier of—

- (i) the date of the mailing of the Secretary’s final determination not to abate such interest, or
- (ii) the date which is 180 days after the date of the filing with the Secretary (in such form as the Secretary may prescribe) of a claim for abatement under this section, and

(B) not later than the date which is 180 days after the date described in subparagraph (A)(i).

(2) Special rules

(A) Date of mailing

Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief

Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) Review

An order of the Tax Court under this subsection shall be reviewable in the same man-

ner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(i) Cross reference

For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 94-455, title XII, §1212(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1712, 1834; Pub. L. 96-589, §6(b)(2), Dec. 24, 1980, 94 Stat. 3407; Pub. L. 99-514, title XV, §1563(a), Oct. 22, 1986, 100 Stat. 2762; Pub. L. 100-647, title I, §1015(n), title VI, §6229(a), Nov. 10, 1988, 102 Stat. 3572, 3733; Pub. L. 104-168, title III, §301(a), (b), 302(a), title VII, §701(c)(3), July 30, 1996, 110 Stat. 1457, 1464; Pub. L. 105-206, title III, §§3305(a), 3309(a), July 22, 1998, 112 Stat. 743, 745; Pub. L. 105-277, div. J, title IV, §4003(e)(2), Oct. 21, 1998, 112 Stat. 2681-909; Pub. L. 107-134, title I, §112(d)(1), Jan. 23, 2002, 115 Stat. 2434; Pub. L. 108-357, title VIII, §903(a)-(c), Oct. 22, 2004, 118 Stat. 1652; Pub. L. 109-135, title III, §303(b)(1), Dec. 21, 2005, 119 Stat. 2609; Pub. L. 110-28, title VIII, §8242(a), May 25, 2007, 121 Stat. 200; Pub. L. 113-295, div. A, title II, §221(a)(111), Dec. 19, 2014, 128 Stat. 4054; Pub. L. 114-113, div. Q, title IV, §421(a), Dec. 18, 2015, 129 Stat. 3123; Pub. L. 115-141, div. U, title IV, §401(a)(288), Mar. 23, 2018, 132 Stat. 1198.)

AMENDMENTS

2018—Subsec. (g)(2)(E). Pub. L. 115-141 substituted “section 6664(d)(3)(A)” for “section 6664(d)(2)(A)”.

2015—Subsec. (h). Pub. L. 114-113, §421(a)(1), substituted “Judicial review” for “Review of denial” in heading.

Subsec. (h)(1). Pub. L. 114-113, §421(a)(2), substituted “if such action is brought—” and subpars. (A) and (B) for “if such action is brought within 180 days after the date of the mailing of the Secretary’s final determination not to abate such interest.”

2014—Subsec. (f)(3). Pub. L. 113-295 struck out par. (3). Text read as follows: “Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.”

2007—Subsec. (g)(1)(A), (3)(A). Pub. L. 110-28 substituted “36-month period” for “18-month period”.

2005—Subsec. (g)(1). Pub. L. 109-135 inserted at end “If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.”

2004—Subsec. (g)(1)(A). Pub. L. 108-357, §903(a), substituted “18-month period” for “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)” in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 108-357, §903(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (g)(2)(E). Pub. L. 108-357, §903(c), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108-357, §903(b), redesignated subpar. (D) as (E).

Subsec. (g)(2)(F). Pub. L. 108-357, §903(c), redesignated subpar. (E) as (F).

Subsec. (g)(3)(A). Pub. L. 108-357, §903(a), substituted “18-month period” for “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)”.

2002—Subsecs. (h), (i). Pub. L. 107-134 added subsec. (i), redesignated former subsec. (i) as (h), and struck

out former subsec. (h), which had authorized abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas and defined the term “Presidentially declared disaster area” for purposes of this provision.

1998—Subsec. (g). Pub. L. 105-206, § 3305(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 105-206, § 3309(a), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 105-206, § 3305(a), redesignated subsec. (g) as (h).

Subsec. (h)(2). Pub. L. 105-277 inserted “Robert T. Stafford” before “Disaster”.

Subsec. (i). Pub. L. 105-206, § 3309(a), redesignated subsec. (h) as (i).

1996—Subsec. (e). Pub. L. 104-168, § 301(b), substituted “Abatement of interest attributable to unreasonable errors” for “Assessments of interest attributable to errors” in heading.

Subsec. (e)(1)(A), (B). Pub. L. 104-168, § 301(a), inserted “unreasonable” before “error” and substituted “in performing a ministerial or managerial act” for “in performing a ministerial act”.

Subsec. (g). Pub. L. 104-168, § 302(a), added subsec. (g). Subsec. (g)(1). Pub. L. 104-168, § 701(c)(3), substituted “section 7430(c)(4)(A)(ii)” for “section 7430(c)(4)(A)(iii)”.

1988—Subsec. (e)(1)(B). Pub. L. 100-647, § 1015(n), inserted “error or” before “delay” and “erroneous or” before “dilatory”.

Subsec. (f). Pub. L. 100-647, § 6229(a), added subsec. (f). 1986—Subsec. (e). Pub. L. 99-514 added subsec. (e).

1980—Subsec. (d). Pub. L. 96-589 substituted “section 6213(g)(2)(A)” for “section 6213(f)(2)(A)”.

1976—Subsecs. (a), (c). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” whenever appearing.

Subsec. (d). Pub. L. 94-455, § 1212(a), added subsec. (d).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title IV, § 421(b), Dec. 18, 2015, 129 Stat. 3123, provided that: “The amendments made by this section [amending this section] shall apply to claims for abatement of interest filed with the Secretary of the Treasury after the date of the enactment of this Act [Dec. 18, 2015].”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-28, title VIII, § 8242(b), May 25, 2007, 121 Stat. 200, provided that: “The amendments made by this section [amending this section] shall apply to notices provided by the Secretary of the Treasury, or his delegate, after the date which is 6 months after the date of the enactment of this Act [May 25, 2007].”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title III, § 303(b)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: “The amendment made by this subsection [amending this section] shall apply to documents provided on or after the date of the enactment of this Act [Dec. 21, 2005].”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 903(d), Oct. 22, 2004, 118 Stat. 1652, as amended by Pub. L. 109-135, title III, § 303(a)(1), Dec. 21, 2005, 119 Stat. 2608; Pub. L. 109-432, div. A, title IV, § 426(b)(1), Dec. 20, 2006, 120 Stat. 2975, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.

“(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

“(A) IN GENERAL.—The amendments made by subsection (c) [amending this section] shall apply with respect to interest accruing after October 3, 2004.

“(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

“(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

“(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

“(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

“(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

Subclause (I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.

“(iii) TAXPAYERS ACTING IN GOOD FAITH.—The Secretary of the Treasury or the Secretary's delegate may except from the application of clause (i) any transaction in which the taxpayer has acted reasonably and in good faith.

“(iv) CLOSED TRANSACTIONS.—Clause (i) shall not apply to a transaction if, as of December 14, 2005—

“(I) the assessment of all Federal income taxes for the taxable year in which the tax liability to which the interest relates arose is prevented by the operation of any law or rule of law, or

“(II) a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.”

[Pub. L. 109-432, div. A, title IV, § 426(b)(2), Dec. 20, 2006, 120 Stat. 2975, provided that: “The amendment made by this subsection [amending section 903(d) of Pub. L. 108-357, set out above] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which it relates.”]

[Pub. L. 109-135, title III, § 303(a)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: “The amendment made by this subsection [amending section 903(d) of Pub. L. 108-357, set out above] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which it relates.”]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107-134, set out as a note under section 6081 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

Pub. L. 105-206, title III, § 3305(b), July 22, 1998, 112 Stat. 743, provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].”

Pub. L. 105-206, title III, § 3309(b), (c), July 22, 1998, 112 Stat. 745, provided that:

“(b) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

“(c) EMERGENCY DESIGNATION.—

“(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act [2 U.S.C. 902(e)], Congress designates the provisions of this section as an emergency requirement.

“(2) The amendments made by subsections (a) and (b) of this section [amending this section] shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act.”

[For message of the President dated July 22, 1998, designating the provisions of section 3309(a), (b) of Pub. L. 105-206 as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 on July 22, 1998, see Cong. Rec., vol. 144, pt. 11, p. 16779.]

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-168, title III, §301(c), July 30, 1996, 110 Stat. 1457, provided that: “The amendments made by this section [amending this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act [July 30, 1996].”

Pub. L. 104-168, title III, §302(b), July 30, 1996, 110 Stat. 1458, provided that: “The amendment made by this section [amending this section] shall apply to requests for abatement after the date of the enactment of this Act [July 30, 1996].”

Pub. L. 104-168, title VII, §701(d), July 30, 1996, 110 Stat. 1464, provided that: “The amendments made by this section [amending this section and sections 6656 and 7430 of this title] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(n) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6229(b), Nov. 10, 1988, 102 Stat. 3733, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to advice requested on or after January 1, 1989.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XV, §1563(b), Oct. 22, 1986, 100 Stat. 2762, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after December 31, 1978.

“(2) STATUTE OF LIMITATIONS.—If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore [sic] is filed before the close of such 1-year period.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective on Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XII, §1212(b), Oct. 4, 1976, 90 Stat. 1712, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to returns filed for taxable years ending after the date of enactment of this Act [Oct. 4, 1976].”

§ 6405. Reports of refunds and credits

(a) By Treasury to Joint Committee

No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of \$2,000,000 (\$5,000,000 in the case of a C corporation) shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.

(b) Tentative adjustments

Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of \$2,000,000 (\$5,000,000 in the case of a C corporation), there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary shall determine the correct amount of the tax.

(c) Refunds attributable to certain disaster losses

If any refund or credit of income taxes is attributable to the taxpayer's election under section 165(i) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, the Secretary is authorized in his discretion to make the refund or credit, to the extent attributable to such election, without regard to the provisions of subsection (a) of this section. If such refund or credit is made without regard to subsection (a), there shall thereafter be submitted to such Joint Committee a report containing the matter specified in subsection (a) as soon as the Secretary shall determine the correct amount of the tax for the taxable year for which the refund or credit is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 92-418, §2(b), Aug. 29, 1972, 86 Stat. 657; Pub. L. 92-512, title II, §203(a), Oct. 20, 1972, 86 Stat. 944; Pub. L. 94-455, title XII, §1210(a), (b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1711, 1834; Pub. L. 95-227, §4(d)(3), Feb. 10, 1978, 92 Stat. 23; Pub. L. 98-369, div. A, title VII, §711(c)(3), July 18, 1984, 98 Stat. 946; Pub. L. 99-514, title XVIII, §1879(e), Oct. 22, 1986, 100 Stat. 2906; Pub. L. 101-508, title XI, §§11801(c)(21)(A), 11834(a), Nov. 5, 1990, 104 Stat. 1388-528, 1388-560; Pub. L. 106-554, §1(a)(7) [title III, §305(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-634; Pub. L. 113-295, div. A, title III, §301(a), Dec. 19, 2014, 128 Stat. 4055.)

AMENDMENTS

2014—Subsecs. (a), (b). Pub. L. 113-295 inserted “(\$5,000,000 in the case of a C corporation)” after “\$2,000,000”.

2000—Subsecs. (a), (b). Pub. L. 106-554 substituted “\$2,000,000” for “\$1,000,000”.